

Land Tax (Amendment) Act 1998

Act No. 41/1998

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Victoria

No. 41 of 1998

Land Tax (Amendment) Act 1998[†]

[Assented to 26 May 1998]

The Parliament of Victoria enacts as follows:

1. *Purpose*

The main purpose of this Act is to amend the **Land Tax Act 1958** to introduce an exemption from land tax for land used as a person's principal place of residence.

2. *Commencement*

This Act comes into operation on the day on which it receives the Royal Assent.

3. *Principal Act*

In this Act the **Land Tax Act 1958** is called the Principal Act.

No. 6289.
Reprinted as
at 1 February
1997 and
further
amended by
Nos 31/1997,
40/1997,
86/1997 and
101/1997.

4. *Definitions*

(1) In section 3(1) of the Principal Act **insert** the following definitions—

' **"joint owners"** means persons—

- (a) who own land jointly or in common, whether as partners or otherwise; or
- (b) who are deemed by this Act to be joint owners;

"principal place of residence" includes sole place of residence;'

(2) In section 3(1) of the Principal Act—

- (a) in the definition of "owner", after "means" **insert** ", except in Part IIA,";
- (b) in the definition of "trustee", before "includes" **insert** ", except in Part IIA,".

5. *New Part IIA inserted*

After Part II of the Principal Act **insert**—

**'PART IIA—PRINCIPAL PLACE OF
RESIDENCE EXEMPTION**

13AA. *Definitions*

(1) In this Part—

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"discretionary trust" means a trust under which the vesting of the whole or any part of the trust property—

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries or the quantum of interest to be taken, or both; or
- (b) will occur in the event that a discretion conferred under the trust is not exercised;

"owner", in relation to land, means a person—

- (a) entitled to the land for an estate of freehold in possession; or
- (b) if the land is under a lease from the Crown, entitled to a leasehold interest as referred to in section 43—

and includes the owner of a life estate in the land as referred to in section 41;

"trustee" means trustee within the meaning of section 3(1) but does not include—

- (a) a trustee of a discretionary trust; or
- (b) a trustee of a trust to which a unit trust scheme relates; or
- (c) a liquidator;

"unit trust scheme" means an arrangement made for the purpose, or having the effect, of providing facilities for participation by a person, as a beneficiary under a trust, in any profit or income arising from the acquisition,

holding, management or disposal of property under the trust.

- (2) For the purposes of this Part, a person is not a trustee of a trust relating to land by reason only that the land is subject to an implied or a constructive trust.

13A. *Principal place of residence exemption*

- (1) Subject to this Part, the following land is exempt from taxation—
- (a) land owned by a natural person that is used and occupied as the principal place of residence of that person;
 - (b) land owned by a trustee of a trust that is used and occupied as the principal place of residence of a natural person who is a beneficiary of the trust.
- (2) Subject to section 13B, the exemption in sub-section (1) applies only to land used and occupied as the principal place of residence of the owner or beneficiary—
- (a) since 1 July in the year preceding the year for which the exemption is claimed; or
 - (b) if the owner or trustee became the owner of the land on or after 1 July in the year preceding the year for which the exemption is claimed, since a later date during that year.
- (3) The exemption in sub-section (1) applies, in addition to land of an owner that is used and occupied as a person's principal place of residence ("**the PPR land**"), to land owned by that owner—

- (a) that is contiguous with the PPR land or that is separated from the PPR land only by a road or railway or other similar area across or around which movement is reasonably possible; and
 - (b) that enhances the PPR land; and
 - (c) that is used solely for the private benefit and enjoyment of the person who uses and occupies the PPR land and has been so used—
 - (i) since 1 July in the year preceding the year for which the exemption is claimed; or
 - (ii) if the owner or trustee became the owner of the land on or after 1 July in the year preceding the year for which the exemption is claimed, so used and occupied since a later date during that year.
- (4) This section applies to land whether owned by a sole owner or joint owners.
- (5) In determining whether land is used or occupied as the principal place of residence of a person, account must be taken of every place of residence of the person, whether in Victoria or elsewhere.

13B. *Deferral of tax on certain residential land for 6 months*

- (1) If—
- (a) land would be exempt from taxation in respect of a year under section 13A but for section 13A(2); and
 - (b) the owner satisfies the Commissioner that the land is intended to be
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continuously used and occupied as the principal place of residence of the owner or, in the case of a trustee, as the principal place of residence of a beneficiary, for a period of at least 6 months from the date that the land was first so used and occupied—

the Commissioner may determine that land tax in respect of the land for that year is not payable until the expiry of that 6 month period.

- (2) If land that would be exempt from taxation in respect of a year but for section 13A(2) has been continuously used and occupied as the person's principal place of residence for the period of 6 months, the land becomes exempt from taxation in respect of that year at the end of that period.

13C. *Temporary absence from principal place of residence*

- (1) For the purposes of this Part, land is taken to be used and occupied as the principal place of residence of a person despite the person's absence from the land if the Commissioner is satisfied—
- (a) that the absence is temporary in nature; and
 - (b) that the person intends to resume use or occupation of the land as his or her principal place of residence after the absence; and
 - (c) that, in respect of the period of absence, no other land is exempt from taxation under this Part as the principal place of residence of the owner or, in the case of
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a trustee, as the principal place of residence of a beneficiary; and

- (d) that the owner has not made any claim for exemption for land tax under a law of another jurisdiction (whether in or outside Australia) in respect of the period of absence for his or her principal place of residence or, in the case of a trustee, as the principal place of residence of a beneficiary.
- (2) For the purposes of section 13I, land to which sub-section (1) applies is not to be taken to be land used by a person to carry on a substantial business activity only because the owner lets the land for residential purposes during the absence.
- (3) Sub-section (1) does not apply in the case of a temporary absence that continues for more than 2 years or such longer period as the Commissioner determines in a particular case.

13D. *Exemption continues on death of resident*

- (1) If land is used and occupied as the principal place of residence of a person and the person dies, liability for tax is to be assessed as if the person had not died but had continued to use and occupy the land as his or her principal place of residence.
- (2) Sub-section (1) operates only until the earlier of—
- (a) the first anniversary of the person's death; or
- (b) the day on which the person's interest in the land vests in another person under a trust; or
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- (c) the day on which the person's interest in the land vests in a person (other than the person's personal representative) under the administration of the person's estate.

13E. *Exemption continues if land becomes unfit for occupation*

- (1) If land that is exempt from taxation under section 13A(1) becomes unfit for occupation as the principal place of residence of a person because of damage or destruction caused by an event such as fire, earthquake, storm, accident or malicious damage, liability for tax is to be assessed while the owner continues to own the land as if it had continued to be used and occupied as the person's principal place of residence.
- (2) Sub-section (1) operates until the second anniversary of the day on which the land became unfit for occupation as the person's principal place of residence.
- (3) Sub-section (1) does not apply if, at any time during which it would otherwise apply, any other land is exempt from taxation under section 13A(1) as the principal place of residence of the owner or, in the case of a trustee, as the principal place of residence of a beneficiary.

13F. *Purchase of new principal residence*

- (1) If a person—
- (a) becomes the owner of land in a year for use and occupation as his or her principal place of residence; and

(b) as at 31 December in that year uses and occupies other land as his or her principal place of residence—

the land referred to in paragraph (a) is exempt from taxation for the following year.¹

(2) If a trustee—

(a) becomes the owner of land in a year for use and occupation as the principal place of residence of a beneficiary under the trust; and

(b) as at 31 December in that year the beneficiary uses and occupies other land as his or her principal place of residence—

the land referred to in paragraph (a) is exempt from taxation for the following year.²

(3) An exemption under sub-section (1) or (2) is revoked if the owner or beneficiary does not continuously use and occupy the land as his or her principal place of residence for at least 6 months, commencing within 12 months after the date on which the owner or trustee became the owner of the land.

(4) The Commissioner may assess the tax payable by the owner or trustee in the circumstances referred to in sub-section (3).

13G. *Sale of old principal residence*

(1) If an owner—

(a) as at 31 December in a year uses and occupies land as his or her principal place of residence; and

(b) as at that date is the owner of other land that, for a period of at least 6 months during that year, was continuously used

and occupied as the principal place of residence of the owner—

the land referred to in paragraph (b) is exempt from taxation in respect of the following year.³

(2) If—

- (a) as at 31 December in a year, land is used and occupied as the principal place of residence of a beneficiary under a trust; and
- (b) as at that date the trustee is the owner of other land that, for a period of at least 6 months during that year, was continuously used and occupied as the principal place of residence of the beneficiary—

the land referred to in paragraph (b) is exempt from taxation in respect of the following year.⁴

- (3) An exemption under sub-section (1) or (2) is revoked if the owner or trustee is still the sole or joint owner of the land referred to in sub-section (1)(b) or (2)(b) at the end of the year in respect of which the land is exempt.
- (4) The Commissioner may assess the tax payable by the owner or trustee in the circumstances referred to in sub-section (3).

13H. *Unoccupied land subsequently used as principal residence*

- (1) An owner who has paid tax in respect of a year in respect of land that is not occupied is entitled to a refund of that tax if—
 - (a) for at least 6 months commencing in that year, the land is continuously used

and occupied as the principal place of residence of the owner; and

- (b) an application for a refund is made before the end of the next following year.
- (2) A trustee who has paid tax in respect of a year in respect of land that is not occupied is entitled to a refund of that tax if—
- (a) for at least 6 months commencing in that year, the land is continuously used and occupied as the principal place of residence of a beneficiary under the trust; and
 - (b) an application for a refund is made before the end of the next following year.
- (3) If—
- (a) an owner or trustee is entitled under sub-section (1) or (2) to a refund of tax in respect of a year in respect of land; and
 - (b) the owner or trustee is not entitled to an exemption under this Part in respect of any other land in respect of that year or the following year—
- the land referred to in paragraph (a), while owned by the owner or trustee, is exempt from taxation in respect of that next following year.
- (4) Sub-sections (1), (2) and (3) do not apply if the owner or trustee derived any income from the land at any time during which it was not occupied as a principal place of residence.
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13I. *Partial exemption if land used for business activities*

- (1) Despite anything to the contrary in this Part, if land that would be exempt from taxation under another provision of this Part, but for this section, is used by any person to carry on a substantial business activity, the exemption applies only to the extent that the land is used and occupied for residential purposes.
- (2) In determining whether land is used by a person to carry on a substantial business activity, account must be taken of—
 - (a) whether paid employees or contractors (other than employees or contractors who are relatives of, and who ordinarily reside with, the person who uses and occupies the land as his or her principal place of residence) work on the land; and
 - (b) whether any part of the land is used or allocated solely for business purposes; and
 - (c) if part of the land is used or allocated (whether solely or partly) for business purposes, the proportion of the area of the land, or of the floor space of buildings on the land, that is so used or allocated; and
 - (d) the amount of income (if any), and the proportion of the person's total income, that is derived from business activities carried on on the land; and

- (e) such other matters (if any) as are prescribed for the purposes of this section.
- (3) If sub-section (1) applies, the Commissioner must apportion the value of the land as between use and occupation for residential purposes and use for business purposes, having regard to the proportion of the land used for each purpose and the extent to which each proportion is so used.
- (4) The Commissioner may consult the Valuer-General in relation to an apportionment under this section.

13J. *Partial exemption or refund for trustees*

- (1) Despite anything to the contrary in this Part, if—
 - (a) an exemption from taxation or a refund of tax is provided for in this Part as a consequence of the continuous use and occupation of land as the principal place of residence of one or more beneficiaries under a trust; and
 - (b) other beneficiaries under the trust who do not use and occupy the land as their principal place of residence have a beneficial interest in the land—

the amount of the exemption or refund is determined as if the value of the land for the purposes of the exemption or refund were such proportion of the value of the land as is equal to the proportion that the interest in the land held by the beneficiary bears to the total interests of all beneficiaries in the land.

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- (2) Nothing in sub-section (1) applies in the case of a beneficiary entitled to a life estate in possession.

13K. *Prohibition on passing on land tax*

- (1) A provision in a residential tenancy agreement entered into on or after 1 January 1998 to the effect that the tenant is liable to pay, or to reimburse the landlord in respect of, any land tax payable by the landlord in respect of the rented premises is void.
- (2) This section applies despite anything to the contrary in section 71(3).
- (3) In this section—

"residential tenancy agreement" means an agreement, whether or not in writing and whether express or implied, under which a person lets premises as a residence.

13L. *Application of Part*

The exemptions and refunds contained in this Part apply with respect to land tax for 1998 and each subsequent year.'

6. *Notices of disposition no longer required*

In section 15 of the Principal Act sub-section (3) is **repealed**.

7. *New section 45 substituted and 45A inserted*

For section 45 of the Principal Act **substitute**—

'45. *Assessment and liability of joint owners*

- (1) Joint owners of land are to be assessed and liable for tax in accordance with this section.
- (2) Joint owners of land are to be jointly assessed and liable for tax in respect of the

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- land as if it were owned by a single person, without regard to—
- (a) the separate interest of each joint owner; or
 - (b) any other land owned by any joint owner (either alone or jointly with someone else).
- (3) Each joint owner of land is also to be separately assessed and liable in respect of—
- (a) the owner's individual interest in the land (as if the owner were the owner of a part of the land in proportion to that interest); and
 - (b) any other land owned by the owner alone; and
 - (c) the owner's individual interest in any other land.
- (4) There is to be deducted from the tax payable by a joint owner under sub-section (3) an amount (if any) necessary to avoid double taxation, being the lesser of—
- (a) the amount determined by the formula:
$$A \times B$$
where—

A is the proportion of the owner's individual interest in the jointly-owned land to the total interests in that land;

B is the total amount of tax assessed on the jointly-owned land under sub-section (2); and
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(b) the amount determined by the formula:

$$\frac{C}{D} \times E$$

where—

C is the value of the joint owner's individual interest in the jointly-owned land (as determined under sub-section (3)(a));

D is the total value of all land of the joint owner assessed under sub-section (3);

E is the amount of tax assessed under sub-section (3).

- (5) For the purposes of this section a joint owner may be separately assessed under sub-section (3) in respect of land even though no tax is jointly assessable in respect of that land under sub-section (2).
- (6) The liability of a joint owner for tax must be taken always to have been as set out in this section as substituted by section 7 of the **Land Tax (Amendment) Act 1998**.
- (7) Despite sub-section (6), section 45, as in force immediately before the commencement of section 7 of the **Land Tax (Amendment) Act 1998**, continues to apply with respect to the assessment of joint owners if proceedings were issued before 21 April 1998 in which the liability for tax of the joint owners was in issue.

45A. *Joint assessments in the case of principal place of residence land*

- (1) For the purposes of section 45 and subject to this section, if land that is jointly owned is

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- exempt from taxation under Part IIA as the principal place of residence of one or more, but not all, of the joint owners—
- (a) no tax is jointly assessable in respect of that land under section 45(2);
 - (b) each joint owner who does not use and occupy the land as his or her principal place of residence is liable to pay tax and may be separately assessed in respect of that land under section 45(3).
- (2) A joint owner of land that is exempt from taxation under Part IIA in respect of a year ("the tax year") because of its use and occupation as the principal place of residence of another joint owner of the land is not, in respect of the tax year, liable to pay or be assessed under section 45(3) for tax in respect of the land—
- (a) if, at any time during the first year before the tax year, the land was used and occupied as the principal place of residence of the first mentioned joint owner and that other joint owner of the land; or
 - (b) if—
 - (i) at any time during the second year before the tax year the land was used and occupied as the principal place of residence of the first mentioned joint owner and that other joint owner of the land; and
 - (ii) there is no other land that is exempt from taxation under Part IIA in respect of the tax year because of its use and occupation
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as the principal place of residence
of the first mentioned joint owner.

- (3) Despite anything to the contrary in this section or Part IIA, if a joint owner of land ("the PPR land") who, because of sub-section (2), is not liable to be assessed under section 45(3) for tax in respect of the PPR land in respect of a year ("the tax year"), resumes use and occupation of the PPR land during the tax year, the joint owner is liable for tax in respect of the tax year in respect of any other land that, but for this sub-section, would be exempt from tax under Part IIA in respect of the tax year.
- (4) Except to the extent set out in sub-section (3), nothing in this section takes away from or affects the operation of Part IIA.'

8. Consequential amendments

In the Principal Act, sections 50A and 91AB are **repealed**.

9. Regulations

After section 93(1)(b) of the Principal Act **insert—**

"(c) prescribing factors to be taken into account for the purposes of section 13I;"

10. Repeal of spent legislation

The **Land Tax (Revision) Act 1991** is **repealed**.

No. 74/1991
as amended
by Nos
71/1992,
76/1992 and
30/1993.

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NOTES

[†] *Minister's second reading speech—*

Legislative Assembly: 23 April 1998

Legislative Council: 14 May 1998

The long title for the Bill for this Act was "to amend the **Land Tax Act 1958** to introduce a principal place of residence exemption, to repeal the **Land Tax (Revision) Act 1991** and for other purposes."

¹ In this situation, the owner will also be exempt from taxation in respect of the land referred to in paragraph (b) in the circumstances set out in section 13A(1)(a).

² In this situation, the owner will also be exempt from taxation in respect of the land referred to in paragraph (b) in the circumstances set out in section 13A(1)(b).

³ In this situation, the owner will also be exempt from taxation in respect of the land referred to in paragraph (a) in the circumstances set out in section 13A(1)(a).

⁴ In this situation, the owner will also be exempt from taxation in respect of the land referred to in paragraph (a) in the circumstances set out in section 13A(1)(b).